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AUG 24 2005

In re Application of : **OFFICE OF PETITIONS**
Charles L. Branch, et al. :
Application No. 09/870,023 : DECISION ON PETITION
Filed: May 30, 2001 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 4002-2533 :
:

This is a decision in response to the petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of a prior-filed nonprovisional application No. 09/701,933.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and

¹ Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

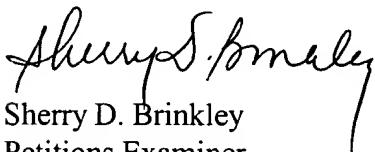
The petition satisfies all of the above requirements.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

The granting of the petition to accept the delayed benefit claim to the prior-filed application(s) under 37 CFR 1.78(a)(3) should not be construed as meaning that the application is entitled to the benefit of the prior-filed application(s). In order for the instant application to be entitled to the benefit of the prior-filed application(s), all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

This application is being referred to Technology Center Art Unit 3732 for consideration by the Examiner of the amendment filed December 6, 2004, including applicant's claim under 35 U.S.C. §120 and 37 CFR 1.78(a)(1) and (2) for the benefit of priority to the prior-filed nonprovisional application No. 09/703,933.

Telephone inquiries related to this decision should be directed to Sherry D. Brinkley at (571) 272-3204.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy


Frances M. Hicks
Lead, Petitions Examiner
Office of Petitions
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Attachment: Corrected Filing Receipt